

99-639 - INDEPENDENT AGENCIES

CHAPTER 101 – ConnectME AUTHORITY

SUMMARY – This Chapter describes the operation of the ConnectME Authority.

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§ 1 PURPOSE

The purpose of this Chapter is to implement the provisions of the Advanced Technology Infrastructure Act contained in 35-A M.R.S.A. §§ 9201-9215 and 36 M.R.S.A. §2017. This Chapter describes the operation of the ConnectME Authority.

As stated in 35-A § 9204, duties of the Authority include:

1. Establish criteria defining unserved and underserved areas;
2. Enhance communications technology infrastructure;
3. Monitor wireless coverage in areas where the authority determines the quality of the coverage is inadequate;
4. Expand the availability of broadband to residential and small business customers in unserved or underserved areas;
5. Expand the availability of broadband with bandwidth, synchronicity, reliability and security adequate to serve business, education and enterprise consumers in unserved or underserved areas;
6. Otherwise enhance the State's communications technology infrastructure in unserved and underserved areas;
7. Collect, aggregate, coordinate and disseminate information and data concerning communications services and advanced communications technology infrastructure in the State;
8. Track investment in advanced communications technology infrastructure;
9. Continually assess the availability of and need for advanced communications technology infrastructure in unserved or underserved areas within the State;
10. Identify and secure federal and other funding sources for broadband or wireless deployment or education;
11. Identify opportunities for coordination among providers, consumers and state and local governmental entities, including coordination with the statewide emergency radio network; and

12. Create and facilitate public awareness and educational programs to encourage the use of broadband services.

§ 2 DEFINITIONS

As used in this Chapter, the following terms have the following meanings.

- A. Advanced Communications Technology Infrastructure. “Advanced communications technology infrastructure” means any communications technology infrastructure or infrastructure improvement that expands the deployment of, or improves the quality of, broadband availability or wireless service coverage.
- B. Authority. “Authority” means the ConnectME Authority established in 35-A M.R.S.A. § 9203.
- C. Broadband Service. “Broadband service” means a two-way, always-on, communications service that provides access to public data networks and the Internet, and meets certain performance criteria determined periodically by the Authority to be the minimum necessary to use common applications and network services.
- D. Broadband Service Provider. “Broadband service provider” means a communications service provider that provides broadband service, but does not include a provider of commercial mobile service as defined under 47 United States Code, Section 332(d).
- E. Certificate of Qualification. “Certificate of Qualification” means the certificate issued to an applicant by the Authority in accordance with the requirements of section 3 of Maine Revenue Services Rule No. 324 (18-125 CMR 324) as a prerequisite to applying for tax reimbursement from Maine Revenues Services in accordance with 36 M.R.S.A. §2017.

F. Communications Service. “Communications service” means any wireline voice, satellite, data, fixed wireless data or video retail service.

G. Communications Service Provider. “Communications service provider” means:

1. Any entity offering retail communications service to customers in the State; or
2. Any facilities-based provider of retail mobile wireless voice or data retail service that voluntarily chooses to be assessed by the Authority under 35-A M.R.S.A. § 9211.

H. Infrastructure. “Infrastructure” means a physical component or collection of physical components that provide the basic support for distributing communication services.

I. Mobile Communications Service Provider. “Mobile communications service provider” means any facilities-based provider of retail mobile wireless voice or data service.

J. Public Data Networks. “Public Data Networks” means a network available to the public for the transmission of data, usually using packet switching protocol.

K. Qualifying ConnectME Zone. “Qualifying ConnectME Zone” means a geographic area that the Authority has determined is an unserved or underserved area by advanced communications technology infrastructure on the date the sale of machinery and equipment to the applicant occurs for reimbursement of Maine sales and use taxes under 36 M.R.S.A. §2017.

L. Underserved Area. “Underserved Area” means any geographic area where broadband service or mobile communications service exists, but where the Authority determines that the service is inadequate.

M. Unserved Area. “Unserved Area” means any geographic area without broadband service or mobile communications service.

§ 3 REQUIRED FILING OF DATA

A. Broadband Service Provider. All communications service providers that are required to file FCC Form 477, will file copies of the form, filed at the Federal Communications Commission, with the Authority. All other providers will file the data required in subsection 3(A)(3), using the schedule in subsection 3(A)(1).

1. Schedule

a. Reports containing data for the period July 1 through December 31 are due March 1 the following year or within 30 days after filing at the FCC, whichever is later.

b. Reports containing data for the period January 1 through June 30 are due September 1 of the same year or within 30 days after filing at the FCC, whichever is later.

2. Filing Procedure. Filings shall be made via a secure electronic transmission, under procedures determined by the Authority.

3. Description of Products and Services. Along with filing the FCC Form 477 data with the Authority, each broadband service provider will provide additional information that describes its services as of December 31 or June 30, depending on the filing date. The additional information must include, at a minimum:

a. A description of each type of broadband service offered and technology used to provide the service;

- b. The prices for each offering; and
- c. The total number of customers purchasing each offering.

B. Mobile Communications Service Provider. By March 1 of each year, each mobile communications service provider that contributes to the ConnectME Fund will file the following information with the Authority, with information current as of December 31 of the previous year, a mobile communications service provider that does not contribute to the ConnectME fund is not required to file the information:

1. Map One. A coverage map at -95 dB in a GIS format and in real-world coordinate space (such as MapInfo TAB or MIF or ESRI SHP). This map layer must be a true or false depiction indicating where the mobile communications service provider network operates at -95dB or better, and need not include a continuous qualitative depiction of signal quality across the network;

2. Map Two. A coverage map at -85 dB in a GIS format and in real-world coordinate space (such as MapInfo TAB or MIF or ESRI SHP). This map layer must be a true or false depiction indicating where the mobile communications service provider network operates at -85dB or better, and need not include a continuous qualitative depiction of signal quality across the network; and

3. Description of Service. A description containing:

- a. Frequency and/or spectrum used in each area served;
- b. Transmission technology (TDMA, CDMA, GSM, etc.) in each area served;
- c. Areas of digital and analog service; and

d. Number of mobile communications devices provided in Maine.

§ 4 PROTECTION OF CONFIDENTIAL INFORMATION

A. Protected Information. Pursuant 35-A M.R.S.A. § 9207, the Authority may, on its own or upon request of any person or entity, designate information as protected and exempt such information from public disclosure to protect the security of public utility systems or to protect the legitimate competitive or proprietary interests of communications service providers and mobile communications service providers. An entity submitting information protected under section 4 or an Authority-issued protective order, will mark the top of each page in large, conspicuous typeface “CONFIDENTIAL.” Each type of confidential information contained in the document must contain a reference to the specific subsection or protective order providing protection.

1. Critical Infrastructure Information.

a. Standard. The Authority will protect from public disclosure information concerning any communication service infrastructure that could facilitate the intentional, illegal interference with a communications service or mobile communications service.

b. Criteria. In determining what information is protected as critical infrastructure information, the Authority considers:

i. The extent to which the information could facilitate the disruption of critical emergency or other government communication services such as E911;

ii. The extent to which the information could facilitate the disruption of public communication services; and

iii. The ease or difficulty with which a person could acquire or duplicate the information from other sources.

c. Protected Information: The Authority must automatically protect precise infrastructure location information, including geo-referenced data, without a motion for protective order submitted by any provider. This includes, but is not limited to:

i. Digital Subscriber Line Access Multiplexers (DSLAMs);

ii. Wireless towers and transmitters;

iii. Repeaters; and

iv. Distribution plant (including, but not limited to copper and fiber telephone plant as well as coaxial cable).

d. Information Protected Upon Request. Upon request, the Authority will designate information other than that described in subsection (4)(1)(c) above as protected if it finds that such information meets the criteria of this subsection.

2. Proprietary Business Information.

a. Standard. The Authority will protect from public disclosure information of a competitive or proprietary nature to the minimum extent necessary to protect the legitimate competitive or proprietary interests of communications service providers and mobile communications service providers.

b. Criteria. In determining what proprietary business information will be protected, the Authority will consider:

- i. The value of the information to the provider and its competitors;
- ii. The amount of effort or money the provider expended in developing the information;
- iii. The extent of measures taken by the provider to guard the secrecy of the information;
- iv. The ease or difficulty with which others could properly acquire or duplicate the information; and
- v. The degree to which third parties have placed the information in the public domain or rendered the information “readily ascertainable.”

c. Protected Information. The Authority must protect the following proprietary business information without further showing from the providers:

- i. Information provided pursuant to section 3, except if it is otherwise publicly available;
- ii. Equipment make and model; and
- iii. Non-public financial statements.

d. Information Protected Upon Request. Upon request, the Authority will consider designating other information as protected if it finds that such information meets the criteria of this subsection.

B. Issuance of Protective Orders. The Authority may, on its own motion or by motion of any person or entity, protect specific information or a class of information that has not been previously designated by the Authority as protected.

1. Motion for Protective Order. The party seeking the protective order must submit a Motion for Protective Order or Notice of Protective Order showing how the information meets the standards of either subsection 4(A)(1) or 4(A)(2), and how the protection it seeks is narrowly tailored.

2. Filing and Notice. The Motion for Protective Order or Notice of Protective Order must be submitted to the Authority which will then post it on its website and distribute to interested parties.

3. Opposition to Motion or Notice. Filings in opposition to or support of the Motion for Protective Order or Notice of Protective Order must be made within seven days of the filing of the Motion or Notice.

4. Protective Order Decision. No later than 14 days after the filing of the Motion Protective Order or Notice of Protective Order the Authority will either issue the Protective Order or deny the motion for the Protective Order, stating its reasons for issuance or denial.

C. Revocation of Confidential Treatment of Information. The Authority, upon its own motion or upon motion from any party seeking access to information protected under a Protective Order issued by the Authority or designated confidential by a provider pursuant to these rules, may revoke any prior confidential treatment or overrule a particular provider's designation of specific documents as confidential.

1. Filing of Motion of Revocation. The party seeking access to the confidential information contained in a Protective Order will file a Motion for Revocation of Protective Order (or in the case of the Authority, a Notice of Revocation of Protective Order) explaining why the information sought does not meet the criteria for protection as established by the Authority in this Chapter or otherwise.

2. Notice of Motion. If the Motion for Revocation of Protective Order is directed at a specific Provider, the Motion must be served on that Provider and filed with the Authority. If the Motion is directed to a class of Providers, it need only be filed with the Authority. The Authority will post all Motions for Revocation of Protective Order on its website and distribute it to interested parties.

3. Opposition. Filings in opposition or support of a Motion for Revocation of Protective Order must be made within seven days of the date the Motion was filed.

4. Protective Order Decision. No later than 14 days after the filing of the Motion, the Authority will either issue the Revocation of Protective Order or deny the request for Revocation of the Protective Order, stating its reasons for issuance or denial.

D. Exception to Public Record Law. Information designated as confidential by the Authority is not a public record under Title 1, section 402, subsection 3, per the authority granted in § 9207(1).

§ 5 DESIGNATION OF BROADBAND SERVICE AND ELIGIBLE AREAS

A. Broadband Service. At least annually, the Authority must update the minimum performance criteria for broadband service, for the purposes of this Chapter. The Authority must base its criteria on the state of the market as well as the

performance necessary to meet the current broadband needs of common applications and network services in use in the State.

1. Criteria Governing Performance. To determine minimum performance criteria, the Authority may consider:

- a. Minimum sustained bandwidth for both upstream and downstream transmission;
- b. Maximum latency;
- c. Maximum jitter;
- d. Minimum reliability; and
- e. Any other performance criteria necessary for the use of common broadband applications and network services.

2. Criteria Governing Common Applications and Network Service. To determine common applications and network services, the Authority may consider:

- a. Real-time voice and video communication;
- b. Audio and video streaming;
- c. Network applications;
- d. Network storage;
- e. Collaborative work environments;
- f. Interactive gaming;
- g. File-sharing; and
- h. Any other application or network service that facilitates communication, and data and content exchange.

3. Initial Standard. Until the Authority makes the performance designation provided for in subsection 5(A), broadband is designated as a service capable of being used for the transmission of information at a rate that is not less than 500kbps in both directions (symmetric or bi-directional) for residential and small business users, providing access to the Internet.

B. Unserved Areas. At least annually, the Authority must designate unserved areas for broadband service and mobile communications service, using data under section 3 of this Chapter. The Authority may also designate unserved areas based on verifiable data provided by an individual or group.

1. Broadband Unserved Areas. In designating an unserved area for broadband service, the Authority must find the following characteristics:

- a. The area is currently unserved by a broadband service provider; and
- b. A project to provide broadband service will not be completed in the area within one year.

2. Mobile Communications Service Unserved Areas. In designating an unserved area for mobile communications service, the Authority will designate as unserved any area:

- a. Outside the -95dB area as indicated in maps provided pursuant to subsection 3(B) of this Chapter; and
- b. For which a project to provide mobile communications service will not be completed in the area within one year.

C. Underserved Areas. At least annually, the Authority will designate underserved areas for broadband service and mobile communications service, using data under section 3 of this Chapter. The Authority may also designate underserved areas based on data provided by an individual or group.

1. Broadband. In designating an underserved area for broadband service the Authority will consider the following:

a. The lowest cost broadband service that is available is provided at a price that exceeds 150% of the statewide average for reasonably similar service; or

b. The overall capacity, reliability, or quality of the broadband service available is inadequate to meet current or projected needs for the area.

§ 6 CONNECTME AUTHORITY SUPPORT

A. Eligible Areas. The Authority will determine whether an unserved or underserved area is eligible for ConnectME support. The Authority's first priority will be to support projects in unserved areas where there are no prior plans to develop infrastructure improvements. In determining eligibility, the Authority will consider the following criteria:

1. Broadband. An eligible unserved or underserved area for broadband service may create an overlap in existing broadband coverage for less than twenty percent (20%) of households in the proposed coverage area;

2. Mobile Communications Service. An eligible unserved or underserved area for mobile communications service, one or more of these priorities:

- a: Population data census blocks with more than 100 people per square mile;
- b: Any public road with over 500 vehicles per day usage; or
- c: Service center communities and high usage service “holes.”

3. Private Investment. Authority support for projects in the unserved or underserved area will not inhibit or impede private investment in the area; and

4. Prior Investment. Authority support for projects in the unserved or underserved area will not diminish the value of prior investment in advanced communications technology infrastructure used to provide broadband service or mobile communications service within the area.

B. Eligible Applicants. Any grants, direct investments, or loans under this Chapter will be made on behalf of, in partnership with, or in support of, one or more communications service providers that are remitting assessments to the Authority under 35-A M.R.S. A. § 9211. Projects contained in approved proposals must be completed within one year of funding unless a waiver is granted by the Authority due to unique or unforeseen circumstances. The Authority must also determine that, without the Authority's action, the installation of adequate advanced communications technology infrastructure in an unserved or underserved area would not otherwise occur. Applicants eligible to receive Authority support for advanced communication infrastructure projects may include:

- 1. General-purpose local governments (municipalities and counties);
- 2. Local government authorities, and joint or multi-county development authorities;
- 3. Private for-profit companies that provide broadband; and

4. Any other responsible entity or group determined by the Authority to be capable of installing, using, and managing advanced communications technology infrastructure in the area.

C. Eligible Activities. Eligible uses of funds provided under the ConnectME Fund include activities, facilities, and services described in 35-A M.R.S.A. §§ 9204-9205. Eligible activities include: the provision of public infrastructure, services, facilities and improvements needed to implement new broadband services, enhance existing broadband services, implement new mobile communications service, or enhance existing mobile communications service. Funds may also be used for matching requirements, “gap” financing, and grants, that may assist projects in qualifying for other sources of funding, as well as any other necessary activities that are integral and necessary for the development, installation and use of a broadband or mobile communications system.

D. Application Process. Within 90 days of the effective date of this Chapter, the ConnectME Authority will establish an application process that, at a minimum, includes the following provisions:

1. **Content of Application.** The application will include, at a minimum, the following:

a. a description of the area proposed to be served by the project and sufficient information to establish that it is an unserved or underserved area;

b. a description of the proposed project, including public-private partnerships that have been established, evidence that the private partner in the project is eligible to receive funding from the Authority, the type of service to be provided and, in the case of broadband service, the upstream and downstream speeds of the service to be provided, an estimate of the time required to complete the proposed project, the percentage distribution of households and businesses within the area to be served by

the project and the estimated price per customer of the service to be provided by the proposed project;

- c. the total amount of funding requested from the Authority;
- d. the applicant's financial commitment to the project in addition to the funding requested from the Authority;
- e. the estimated number of customers who will directly benefit from the project who are currently unserved or underserved; and
- f. evidence of community support for the proposed project, which may include letters or signatures of residents or businesses located within the area of the proposed project.

2. **Evaluation of Applications.** The application evaluation process will allow the Authority to concurrently evaluate all applications submitted during a particular application period that has been set by the Authority. The scoring of applications is based on a 100-point scale. A project with a total score of less than 50 points may not be funded. A project that serves an underserved area may only be funded if funds are available after all eligible applications for projects to serve unserved areas have been funded. The application will be judged using the following four scoring categories:

- a. **Cost-Benefit.** This category is worth at least 33 points. The cost-benefit scoring is based on relevant factors, including, but not limited to, the amount of funding requested from the Authority per customer eligible to be served by the project, with lower funding per customer receiving a higher cost-benefit score;

b. Community Support. The community support score is based on relevant factors, including, but not limited to, evidence of community support for the project and the percentage of a municipality that will be served by the proposed project;

c. Project Scope. The project scope score is based on relevant factors, including, but not limited to, the number of customers to be served by the project, the type and, when relevant, the speed of service to be offered by the project and the applicant's financial commitment to the project; and

d. Project Value. The project value score is based on relevant factors, including, but not limited to, the estimated price per customer to receive service from the proposed project and any other details of the project that may benefit customers in the area proposed to be served by the proposed project.

E. Certificate of Qualification. A certificate to be developed within 90 days of the effective date of this Chapter and issued to an applicant by the Authority in accordance with the requirements of section 3 of Rule No. 324 (18-125 CMR 324) as a prerequisite to applying for tax reimbursement from Maine Revenues Services in accordance with 36 M.R.S.A. § 2017.

F. Public Notice. Within 14 days of determining the applications that will receive support, the Authority will notify the applicant and post the awards on its website. The Authority will also notify all known broadband service providers and mobile communications service providers, as appropriate, of the approved projects.

G. Private Investment Criteria. Within 14 days of the Authority's notifications made under subsection 6(F) a broadband service provider or mobile communications service provider may submit a certification to the Authority that it will commence within 45 days, and will completely install within one year of the date of the Authority's notification, sufficient advanced communications technology infrastructure to provide

broadband or wireless service in a manner that would render the Authority's support of other projects in an area unnecessary or redundant (unless a waiver is granted by the Authority due to unique or unforeseen circumstances). Any broadband service provided must meet the minimum performance criteria and affordability standards of the Authority contained in subsection 5(A). If the Authority determines the certification to be invalid the support award will be cancelled.

§ 7 ConnectME FUND

A. Assessment. An assessment at the rate of 0.25% is imposed on the value of the following:

1. All retail revenues received or collected from communications services provided in Maine.

2. All retail revenues received or collected from mobile communications service providers that voluntarily agree to be assessed by the Authority.

B. Fund Administrator. The Authority will contract with an appropriate independent fiscal agent to serve as the Fund Administrator. The administrator will establish the time and procedures for payment after consultation with the Authority.

§ 8 WAIVER OF PROVISIONS OF CHAPTER

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Authority may, for good cause, waive any of the requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or 35-A M.R.S.A. §§ 9201-9215 and 36 M.R.S.A. §2017.

BASIS STATEMENT: The factual and policy basis for this Chapter is in the Authority's Order Provisionally Adopting Rule and Statement of Policy Basis, issued on December 28, 2006. The Order Adopting the Final Rule was issued May, 22, 2007. Copies of this Statement and Order have been filed with this Chapter at the Office of the Secretary of State. Copies may also be obtained from the ConnectME Authority, 1 State House Station, Augusta, Maine 04333-0001.

AUTHORITY: 23 M.R.S.A. § 3360-A, 35-A M.R.S.A. §§ 9201-9215.

EFFECTIVE DATE: This Chapter was approved as to form and legality by the Attorney General on _____. It was filed with the Secretary of State on _____ and will be effective on _____.